

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Brian Whitaker**

Plaintiff,

v.

**Victoria Pastry Company, a**  
California Corporation

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of Victoria Pastry Company, a California Corporation; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. Defendant Victoria Pastry Company owned Victoria Pastry located at or about 700 Filbert St, San Francisco, California, in March 2021 and April 2021.

3. Defendant Victoria Pastry Company owns Victoria Pastry located at or

1 about 700 Filbert St, San Francisco, California, currently.

2 4. Plaintiff does not know the true names of Defendants, their business  
3 capacities, their ownership connection to the property and business, or their  
4 relative responsibilities in causing the access violations herein complained of,  
5 and alleges a joint venture and common enterprise by all such Defendants.  
6 Plaintiff is informed and believes that each of the Defendants herein is  
7 responsible in some capacity for the events herein alleged, or is a necessary  
8 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
9 the true names, capacities, connections, and responsibilities of the Defendants  
10 are ascertained.

11  
12 **JURISDICTION & VENUE:**

13 5. The Court has subject matter jurisdiction over the action pursuant to 28  
14 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
15 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 6. Pursuant to supplemental jurisdiction, an attendant and related cause  
17 of action, arising from the same nucleus of operative facts and arising out of  
18 the same transactions, is also brought under California's Unruh Civil Rights  
19 Act, which act expressly incorporates the Americans with Disabilities Act.

20 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
21 founded on the fact that the real property which is the subject of this action is  
22 located in this district and that Plaintiff's cause of action arose in this district.

23  
24 **FACTUAL ALLEGATIONS:**

25 8. Plaintiff went to Victoria Pastry in March 2021 with the intention to  
26 avail himself of its goods or services motivated in part to determine if the  
27 defendants comply with the disability access laws. Not only did Plaintiff  
28 personally encounter the unlawful barriers in March 2021, but he wanted to

1 return and patronize the business several times but was specifically deterred  
2 due to his actual personal knowledge of the barriers gleaned from his  
3 encounter with them.

4 9. Victoria Pastry is a facility open to the public, a place of public  
5 accommodation, and a business establishment.

6 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
7 to provide wheelchair accessible outside dining surfaces in conformance with  
8 the ADA Standards as it relates to wheelchair users like the plaintiff.

9 11. Victoria Pastry provides dining surfaces to its customers but fails to  
10 provide any wheelchair accessible outside dining surfaces.

11 12. A problem that plaintiff encountered was the lack of sufficient knee or  
12 toe clearance under the outside dining surfaces for wheelchair users.

13 13. Plaintiff believes that there are other features of the dining surfaces that  
14 likely fail to comply with the ADA Standards and seeks to have fully compliant  
15 dining surfaces for wheelchair users.

16 14. On information and belief, the defendants currently fail to provide  
17 wheelchair accessible dining surfaces.

18 15. These barriers relate to and impact the plaintiff's disability. Plaintiff  
19 personally encountered these barriers.

20 16. As a wheelchair user, the plaintiff benefits from and is entitled to use  
21 wheelchair accessible facilities. By failing to provide accessible facilities, the  
22 defendants denied the plaintiff full and equal access.

23 17. The failure to provide accessible facilities created difficulty and  
24 discomfort for the Plaintiff.

25 18. The defendants have failed to maintain in working and useable  
26 conditions those features required to provide ready access to persons with  
27 disabilities.

28 19. The barriers identified above are easily removed without much

1 difficulty or expense. They are the types of barriers identified by the  
2 Department of Justice as presumably readily achievable to remove and, in fact,  
3 these barriers are readily achievable to remove. Moreover, there are numerous  
4 alternative accommodations that could be made to provide a greater level of  
5 access if complete removal were not achievable.

6 20. Plaintiff will return to Victoria Pastry to avail himself of its goods or  
7 services and to determine compliance with the disability access laws once it is  
8 represented to him that Victoria Pastry and its facilities are accessible. Plaintiff  
9 is currently deterred from doing so because of his knowledge of the existing  
10 barriers and his uncertainty about the existence of yet other barriers on the  
11 site. If the barriers are not removed, the plaintiff will face unlawful and  
12 discriminatory barriers again.

13 21. Given the obvious and blatant nature of the barriers and violations  
14 alleged herein, the plaintiff alleges, on information and belief, that there are  
15 other violations and barriers on the site that relate to his disability. Plaintiff will  
16 amend the complaint, to provide proper notice regarding the scope of this  
17 lawsuit, once he conducts a site inspection. However, please be on notice that  
18 the plaintiff seeks to have all barriers related to his disability remedied. See  
19 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
20 encounters one barrier at a site, he can sue to have all barriers that relate to his  
21 disability removed regardless of whether he personally encountered them).

22  
23 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
24 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
25 Defendants.) (42 U.S.C. section 12101, et seq.)

26 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
27 again herein, the allegations contained in all prior paragraphs of this  
28 complaint.

1       23. Under the ADA, it is an act of discrimination to fail to ensure that the  
2 privileges, advantages, accommodations, facilities, goods and services of any  
3 place of public accommodation is offered on a full and equal basis by anyone  
4 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
5 § 12182(a). Discrimination is defined, inter alia, as follows:

- 6           a. A failure to make reasonable modifications in policies, practices,  
7 or procedures, when such modifications are necessary to afford  
8 goods, services, facilities, privileges, advantages, or  
9 accommodations to individuals with disabilities, unless the  
10 accommodation would work a fundamental alteration of those  
11 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 12          b. A failure to remove architectural barriers where such removal is  
13 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
14 defined by reference to the ADA Standards.
- 15          c. A failure to make alterations in such a manner that, to the  
16 maximum extent feasible, the altered portions of the facility are  
17 readily accessible to and usable by individuals with disabilities,  
18 including individuals who use wheelchairs or to ensure that, to the  
19 maximum extent feasible, the path of travel to the altered area and  
20 the bathrooms, telephones, and drinking fountains serving the  
21 altered area, are readily accessible to and usable by individuals  
22 with disabilities. 42 U.S.C. § 12183(a)(2).

23       24. When a business provides dining surfaces, it must provide accessible  
24 dining surfaces.

25       25. Here, accessible dining surfaces have not been provided in  
26 conformance with the ADA Standards.

27       26. The Safe Harbor provisions of the 2010 Standards are not applicable  
28 here because the conditions challenged in this lawsuit do not comply with the

1 1991 Standards.

2 27. A public accommodation must maintain in operable working condition  
3 those features of its facilities and equipment that are required to be readily  
4 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5 28. Here, the failure to ensure that the accessible facilities were available  
6 and ready to be used by the plaintiff is a violation of the law.

7  
8 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
9 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
10 Code § 51-53.)

11 29. Plaintiff repleads and incorporates by reference, as if fully set forth  
12 again herein, the allegations contained in all prior paragraphs of this  
13 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
14 that persons with disabilities are entitled to full and equal accommodations,  
15 advantages, facilities, privileges, or services in all business establishment of  
16 every kind whatsoever within the jurisdiction of the State of California. Cal.  
17 Civ. Code § 51(b).

18 30. The Unruh Act provides that a violation of the ADA is a violation of the  
19 Unruh Act. Cal. Civ. Code, § 51(f).

20 31. Defendants’ acts and omissions, as herein alleged, have violated the  
21 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
22 rights to full and equal use of the accommodations, advantages, facilities,  
23 privileges, or services offered.

24 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
25 discomfort or embarrassment for the plaintiff, the defendants are also each  
26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
27 (c).)

**PRAYER:**

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. For equitable nominal damages for violation of the ADA. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court sees fit to grant.

3. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: May 24, 2021

CENTER FOR DISABILITY ACCESS

By: \_\_\_\_\_



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Attorney for plaintiff